

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. ZURCHER and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, Colo.

*Docket No. 96-2417; Submitted on the Record;
Issued September 23, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he is entitled to compensation for wage loss for the intermittent period of February 6 to 21, 1995.

The Board finds that the April 11, 1996 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and law of the case and hereby adopts the hearing representative's findings and conclusions.

On May 31, 1996 appellant requested reconsideration of the hearing representative's decision and in support he submitted two medical reports. Appellant also submitted a physical therapy report and a report from a licensed massage therapist. As these latter two reports are not provided by a physician as defined under the Federal Employees' Compensation Act they are not considered to be medical evidence.¹

Dr. Matthew M. Hine provided a January 24, 1996 report which did not address appellant's alleged disability for work for the period February 6 to 21, 1995, and Dr. David M. Weinstein provided a May 26, 1995 report which also did not address appellant's alleged disability for work for the period in question.

By decision dated June 20, 1996, the Office denied appellant's request for a review of his case on its merits finding that the evidence submitted was irrelevant as it did not address the issue in question, namely whether appellant was totally disabled for employment for the period February 6 to 21, 1995.

¹ The Board notes that therapists are not "physicians" as defined by 5 U.S.C. § 8101(2), and that their reports, therefore, do not constitute competent medical evidence to support appellant's claim. *Theresa K. McKenna*, 30 ECAB 702 (1979); *see Barbara J. Williams*, 40 ECAB 649 (1988) (physical therapist not a "physician").

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or fact not previously considered by the Office; or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”²

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.³

Evidence which does not address the particular issue involved,⁴ or evidence which is repetitive or cumulative of that already in the record,⁵ does not constitute a basis for reopening a case. In this case the evidence submitted in support of appellant's request for a merit review did not address his alleged disability for work for the period February 6 to 21, 1995, and hence it was irrelevant and did not constitute a basis for reopening appellant's claim for further review on its merits. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁶ Appellant has made no such showing here.

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁵ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 20 and April 11, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 23, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member